

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

CAROL J. VINCENT

CIVIL ACTION NO. 17-0573

VERSUS

JUDGE DONALD E. WALTER

CITY OF SULPHUR, ET AL.

MAGISTRATE JUDGE KAY

ORDER OF DISMISSAL

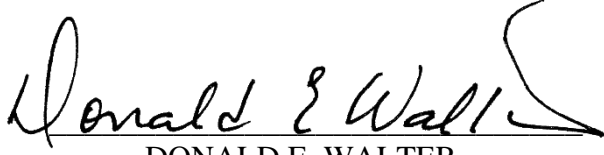
Having reviewed the unopposed notice of abandonment/voluntary dismissal filed by the plaintiff, Carol J. Vincent (“Vincent”), wherein he gives “notice that he does voluntarily abandon and/or dismiss the instant matter,” and finding that Federal Rule of Civil Procedure 41(a)(2) is applicable and warranted,¹

¹The document filed by the plaintiff is entitled “Plaintiff [sic] Notice of Abandonment/Voluntary Dismissal Pursuant to F.R.C.P. 41(a)(1).” See Record Document 83. Contrary to Vincent’s apparent belief, he is not entitled to voluntarily dismiss his case without action of the Court. Pursuant to Federal Rule of Civil Procedure 41(a)(1), a plaintiff may dismiss an action without a court order only if (1) he files the notice of dismissal before the opposing party files either its answer or a motion for summary judgment, or (2) the stipulation of dismissal is signed “by all parties who have appeared.” In this case, the defendants have filed answers. Thus, under Rule 41(a)(2), a plaintiff is required to obtain a “court order, on terms that the court considers proper[.]” to have his lawsuit dismissed.

The right to voluntarily dismiss without prejudice is not absolute. “Rather, dismissal on motion under Rule 41(a)(2) is within the sound discretion of the court. . . .” LeCompte v. Mr. Chip, Inc., 528 F.2d 601, 604 (5th Cir. 1976). “The primary purpose in entrusting dismissal to the supervision of the court under Rule 41(a)(2) is to protect the non-movant from unfair treatment.” Ikospentakis v. Thalassic S.S. Agency, 915 F.2d 176, 177 (5th Cir. 1990). Generally, dismissal should be allowed except where the defendant “will suffer some plain prejudice other than the mere prospect of a second lawsuit.” Holiday Queen Land Corp. v. Baker, 489 F.2d 1031, 1032 (5th Cir. 1974) (quoting Durham v. Fla. E. Coast Ry. Co., 385 F.2d 366 (5th Cir. 1967)).

IT IS ORDERED that the above-captioned matter be and is hereby **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(a)(2). Any motion that may be pending relating to this matter is hereby **DENIED AS MOOT**.

THUS DONE AND SIGNED in Shreveport, Louisiana, on this 4th day of January, 2019.


DONALD E. WALTER
UNITED STATES DISTRICT JUDGE